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EXHIBIT B

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
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3 LEIGHTON TECHNOLOGIES, LLC,
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4 Plaintiff,
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5 v. 04 Civ. 2496(CM)
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6 OBERTHUR CARD SYSTEMS, S.A.,
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7 Defendant.
7
8 -----x
8 White Plains, N.Y.
9 April 4, 2006
9 11:20 a.m.
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10 Before:
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11 THE HONORABLE COLLEEN McMAHON,
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12 District Judge
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13 APPEARANCES
14
14
15 SUTHERLAND, ASBILL & BRENNAN
15 Attorneys for Plaintiff
16 ROBERT A. GUTKIN
16 BLAIR M. JACOBS
17
17
18 BAKER & MCKENZIE
18 Attorneys for Defendant
19 JAMES DAVID JACOBS
19 FRANK M. GASPARO
20
20 Also Present: MIREILLE CLAPIER, Oberthur In-house Counsel
21 JEAN-CLAUDE HUOT, Oberthur In-house Patent
21 Patent Counsel
22
23
24
25 MARY M. STATEN, CSR, RPR, RMR
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1 THE DEPUTY CLERK: This is 04 2496, Leighton
2 Technologies versus Oberthur Card Systems, S.A.
3 Your appearances, please.
4 MR. J. JACOBS: Your Honor, James David Jacobs for
5 Defendant Oberthur.
6 MR. B. JACOBS: Your Honor, Blair Jacobs for Plaintiff
7 Leighton Technologies. And Robert Gutkin will also be
8 presenting this morning.
9 THE COURT: Okay. Have a seat.
10 Interesting briefs.
11 Let me get the chart out.
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5 claims -- Claim 18, for example -- the claims that recite
 6 minimal. They could have written into Claim 20 a pressure such
 7 that less than would crack the chip. They didn't do it. This
 8 is a lot of hand-waving, your Honor. There is no limitation,
 9 as this Court held, against pressure during Step (c)(i) in
 10 Claim 20, plain and simple. Any pressure equal to
 11 encapsulation, greater than encapsulation, or no pressure at
 12 all, no limits on pressure in Step (c)(i).

13 Your Honor, Mr. Gutkin talked about how there was no
 14 testimony about what the card was, what the card was made of,
 15 how you put the card together. I think your Honor picked out
 16 the page in the Oakwood brochure, the Series 6 brochure,
 17 looking at the Smith declaration, which discusses in quite a
 18 bit of detail of what the cards are made of and what they're
 19 used for. And indeed, your Honor, one of the principal uses
 20 today of these kinds of cards, these contactless cards, in
 21 fact, the very use they claim is the commercial success in
 22 their brief, the Leighton claim, is as a credit card.

23 Your Honor, Leighton's invention, alleged invention, I
 24 should say, was a new lamination cycle. I would submit whether
 25 it had an electronic element, which is the antenna, which is

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 1 really unsusceptible to pressure, or a chip which is more
 2 susceptible, or a piece of metal, really doesn't make much
 3 difference. But we show here in the Oakwood reference
 4 inductive coils which are specified on the page, if you look
 5 under "machine reading applications" on the page where it says,
 6 "Cards" -- halfway down the first paragraph -- "Cards for
 7 making many applications have already been designed by Oakwood.
 8 Those include application for varying types," and then it goes
 9 on.

10 THE COURT: And then we go to the next paragraph,
 11 which talks about packaging and the most sophisticated
 12 microchips.

13 MR. J. JACOBS: Exactly, your Honor.

14 The fact of the matter is, the cycle that we disclose
 15 here is Claim 20. Now they talk about these other limitations,
 16 minimal pressure. They do have claims going to that, and I'm
 17 prepared to show you why those claims are obvious.

18 THE COURT: That was Step 2 of this argument.

19 MR. J. JACOBS: That's Step 2 of the argument.
 20 Exactly, your Honor.

21 In the meantime, I think to a person of ordinary skill
 22 in the art -- and this Court is in the position to judge, and
 23 you can say a lot of things it's not, but it's not hard to say
 24 what it is. You're looking at the chart. It's not at all hard
 25 to imagine what this is to a lay person. And this is supposed

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 1 to be a person who is skilled in the art of making plastic
 2 laminated cards.
 3 This brochure, the Oakwood brochure, is distributed to
 4 people who manufacture plastic laminated cards. These aren't
 5 neophytes. To say they don't know how this goes together for a
 6 person who has been making plastic laminated cards for two,
 7 three or four or five years, to even say that proposition makes
 8 no sense. And here they have the cycle. This is Claim 20,
 9 your Honor. May not be Claim 18. May not be the other claims.

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10 But this is claim 20 of the '367 patent.
 11 Another thing, your Honor, I think, which is implicit
 12 in our argument -- and we covered this in our brief -- there is
 13 a question of yield. Any manufacturing process, when you do
 14 mass manufacturing, has certain bad apples you make. Even with
 15 the Leighton process, you're going to have -- the best Oberthur
 16 can do with its commercial production is .8 percent waste.
 17 when they make 100 cards, about .8 are bad. That's the best
 18 they do. Even with a process totally refined, it will be
 19 worse.

20 There is no allegation by Leighton here that the
 21 process that is shown here in Oakwood would totally fail. Yes,
 22 it might crack a few chips, it may crack 90 percent of the
 23 chips. I'm not saying it would. I'm saying hypothetically it
 24 might. The point is, your Honor, there is no yield limitation
 25 in these claims. And the fact that Oakwood has a high waste

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1 factor does not count against the fact that it's anticipatory.

2 We cite a number of cases in our brief, very strong
 3 cases, on this very point, where the Federal Circuit said that
 4 there is no manufacturing requirement if you teach a process
 5 that can produce a card. It might produce a hundred bad ones,
 6 it's still enabling, it's still good prior art.

7 Their whole argument is based upon -- to read into
 8 these limitations, the whole argument is based upon a silent
 9 proposition that without doing it, you're going to have a high
 10 waste factor. So even the fact that you can't read it in
 11 because of the general claim construction, there is no reason
 12 to read it in based upon the reasoning of their argument.

13 THE COURT: Okay. Let's go on to obviousness.

14 MR. GUTKIN: May I have a chance to respond to that?

15 THE COURT: One minute.

16 (Pause)

17 MR. GUTKIN: Our argument is not based on waste. It's
 18 based on the claim construction. It's got a first, second,
 19 third step. There are other claims. We are interpreting the
 20 claim that's at issue consistent with the claim construction.

21 The only other point I want to make is that Mr. Jacobs
 22 says this is obvious to anybody. We lodged a transcript from a
 23 deposition about two weeks ago from Mr. Gruen that was taken in
 24 Munich. He is the president of the International Card
 25 Manufacturers Association. It was Mr. Jacobs's witness, but we

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1 got an opportunity to cross-examine him. He's been active in
 2 the plastics card industry since 1979.

3 On Page 68 of his deposition, Mr. Gruen testifies that
 4 there was no fixed technology for manufacturing cards with
 5 electronic elements in them at the time of the invention.
 6 Answer, quote, "Before 1994, there was no fixed technology.
 7 There were a lot of experimental stages. The manufacturers did
 8 not know where they end up, so everything was being tested and
 9 experimented." That's Pages 68 and 69.

10 Again, is it fair? That's prior to '93, the
 11 technology for putting in electronics. These cards were
 12 changing. It was a process from the early Eighties into the
 13 Nineties, over that quite long time.

14 So while Mr. Jacobs may say it's clear, and I may say

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